

**BOARD OF APPEALS CASE NO. 5250**

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**BEFORE THE**

**APPLICANT: American Tower Corporation  
Grandview Christian Church**

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**ZONING HEARING EXAMINER**

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**OF HARFORD COUNTY**

**REQUEST: Special Exception to locate a  
communications tower in an Agricultural  
District; 2405 Pleasantville Road, Fallston**

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**Hearing Advertised**

**Hearing Dates: 6/17/02, 9/18/02,  
9/25/02 & 10/2/02**

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**Aegis: 4/24/02 & 5/1/02**

**Record: 4/26/02 & 5/3/02**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicant, American Tower Corporation, and the Co-Applicant, Grandview Christian Church, are seeking a special exception, pursuant to Sections 267-53.4C and 267-53.6 of the Harford County Code, to allow a communications tower in an Agricultural District.

The subject property is located at 2405 Pleasantville Road, Fallston, Maryland 21047, on the southwest side of the intersection of Fallston Road (Maryland Route 152) and Pleasantville Road, and is more particularly identified on Tax Map 47, Grid 2E, Parcel 508. The parcel is located in the Third Election District, and contains approximately 9.53 acres.

The first witness to testify was Mr. Richard Moseley, zoning manager for the Applicant, American Tower. Mr. Moseley testified that his job duties include compiling information from different sources to determine whether a proposed communications tower meets code requirements.

After stating that he is familiar with the subject property, Mr. Moseley described the site plan, identified the location of the proposed site, and testified that the property belongs to the Co-Applicant, Grandview Christian Church. He testified that the parcel contains approximately 9.5 acres, and is zoned Agricultural. Mr. Moseley then described the set-backs, both from the property lines, and from the base of the proposed compound to the closest residential structure. He also described a topographical map depicting the surrounding roads, subdivisions, and property elevations, and identified numerous photographs of the proposed site.

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**Mr. Moseley testified that American Tower proposes to build a 195 foot monopole on the subject property, and that it currently has commitments from four of the six regional wireless communications carriers expressing their intent to locate on the proposed site. Because the tower will be less than 200 feet tall, the FAA does not require lighting, and American Tower has no plans to place lights on the proposed structure. In addition to the monopole itself, the Applicant is requesting to construct assorted housing at ground level for the carriers' equipment. He stated that the compound will be screened on all four sides by a double row of pine trees. According to Mr. Moseley, the Applicant, which leases vertical tower space to wireless carriers, attempts to construct towers in locations where multiple carriers have an identified coverage gap. All four carriers intending to locate on the proposed tower have advised the Applicant that they have coverage gaps in the area of the proposed tower. He also stated that in compliance with Harford County Code requirements, the Applicant is willing to make space available on the tower for the County's communications needs.**

**Mr. Moseley testified at length concerning the methods by which American Tower selected the subject property. He stated that the company first reviewed databases of existing structures in the area, and then performed an extensive visual inspection around the subject property looking for existing tall structures on which a tower could potentially be placed. These investigations failed to locate any tall structures near the intersection of Pleasantville Road and Mountain Road suitable for the placement of wireless antennas.**

**Mr. Moseley also testified that there are no medium or high intensity zoned parcels in the area upon which a new tower could be constructed. The primary zoning in the area of the subject property was described as Agricultural, with some B1 parcels found to the east and southwest, and some residential subdivisions or scattered individual houses. All available parcels in the area were considered.**

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**Mr. Moseley stated that the Applicant prefers large parcels without residential structures, located as far as possible from neighboring residential properties. They also look for properties with higher ground elevations, which allow for the construction of shorter monopole style towers. Towers over 200 feet tall must be lighted, lattice style, self-support towers. Mr. Moseley testified that the proposed parcel meets all of the Applicant's location requirements.**

**According to the witness, the Applicant also considered numerous other properties, none of which met the company criteria. He provided extensive testimony regarding Applicant's evaluation of these properties. He first described the "Sawmill Property" located on the northeast corner of Fallston and Pleasantville Roads, and stated that the owner of that property was not interested in leasing space to the Applicant. In addition, that property would be more highly visible, and closer to several subdivisions than the subject parcel. He then testified that the "Rite Aid Parcel", located at the southeast corner of Fallston and Pleasantville Roads has disfavored B1 zoning, is too small for the proposed tower, is located adjacent to residential properties, and is closer to the roadway than the proposed site.**

**The witness next described the Applicant's review of several B1 parcels located immediately across Pleasantville Road from the subject site. He indicated that these lots were not large enough to house a monopole, and still allow for set-backs greater than forty feet from the property line. In addition, the tower would be closer to residential properties if constructed at that location. He also testified that the B1 parcel on the southwestern side of Fallston and Pleasantville Roads is currently occupied by a convenience store and a gas station. In addition to space constraints, locating a monopole on that site would create risks of striking gas wells when digging into the ground.**

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The witness stated that the “Nursery Property”, located west of the subject site on the south side of Fallston Road, also zoned B1, is 80 feet lower in elevation than the proposed site. He testified that the lower elevation would require the construction of a 270 foot lattice style self-support tower. The next parcel identified by Mr. Moseley was the “Diamond-Shaped Property” located at the northwest intersection of Fallston and Pleasantville Roads. He described that parcel as a wooded lot with no road access, and stated that significant deforestation would be required to locate a 100 foot by 100 foot compound on that site. Furthermore, he testified that the parcel is close to a large subdivision, and that numerous houses in that subdivision would back directly to the site. He also stated that the property owner, while willing to sell the property, is not amenable to leasing, and that American Tower does not generally purchase property.

The final site identified by Mr. Moseley was the Fallston Swim Club Property, immediately east of the subject site. The witness testified that some negotiations had taken place between the Applicant and the Swim Club, however the Club had ultimately decided that leasing a portion of its property would result in the loss of too many parking spaces. Mr. Moseley also stated that any monopole constructed on the Swim Club property would be significantly closer to homes in the Brandywine Farms Subdivision.

The witness described the compounds which house monopole towers as unmanned sites requiring approximately one technician visit per month per carrier. He stated that these sites will not create any odors, dust, gas, smoke, fumes, vibration, glare or noise, or have any negative impact on County resources. He testified that the proposed structure will not affect any existing structures, or cause any negative impact upon sensitive natural features, recreation and open space, or cultural and historic national landmarks. He also testified that the Applicant had conducted a survey which determined that there were no cultural or historic landmarks in the area of the subject property.

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Mr. Moseley stated that the Applicant had submitted information to the County's independent radio frequency consultant, as required by the Harford County Code. He identified a copy of the consultant's April 22, 2002 letter, verifying the radio frequency need for the proposed tower.

Finally, Mr. Moseley described a balloon test conducted by the Applicant at the subject site. The test consisted of elevating a six-foot wide balloon 190 feet above the ground at the exact location of the proposed tower. The company then drove around the area photographing the balloon from different locations. Computer generated photo simulations were then compiled, by superimposing the balloon photographs on top of pictures of the subject property. The witness stated that the purpose of the computer generations is to provide an indication of what a tower may look like from differing views and locations, approximately 1,000 feet away from the subject property. Mr. Moseley identified a series of balloon test photographs, containing superimposed graphic representations of a monopole with three antennas.

Numerous area residents appeared to cross-examine Mr. Moseley. In response to their questions, he provided extensive additional testimony concerning the Applicant's search for alternative sites. He testified that, as a result of American Tower's discussions with several carriers about existing coverage gaps, the company had considered all properties within a two and one-half to three mile radius along Fallston Road. He also testified that the center of the Applicant's search ring is located south of Fallston Road, west of Fallston, and south of Lancaster Corner, and that the subject property is located within that search ring. Mr. Moseley acknowledged that the Applicant had observed a farm near Kidd Road, with a silo containing a cellular antenna. However, because American Tower does not construct towers on silos, this information was provided directly to the carriers, all of whom responded that they needed a location closer to the intersection of Fallston and Pleasantville Roads.

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Mr. Moseley elaborated on the Applicant's review of the Youth's Benefit Elementary School and Fallston Recreation Complex properties located just northeast of Fallston Road. He stated that these sites were not suitable because of their proximity to the road, and several residential areas. He was unaware of the proposed construction of new light poles at the Fallston Recreation Complex site, but he testified that the Applicant would not have considered locating on those poles, because it is primarily interested in undeveloped properties. He also testified that 100 foot tall Grandview Christian Church steeple was not considered as a potential site, because American Tower is does not build church steeples. Mr. Moseley then indicated that the Fallston Volunteer Fire Company was deemed inappropriate because it is owned by Harford County, which is not interested in allowing construction of communications towers on its property.

In response to questions about the proposed tower itself, Mr. Moseley testified that it is designed to accommodate at least six carriers, plus Harford County emergency equipment, and numerous eight to ten foot whip-type antennas commonly utilized by paging companies. He testified that the proposed tower will be approximately five feet wide at the base, two feet wide at the top, and will be constructed of galvanized steel. Finally, Mr. Moseley testified that a double row of pine trees will be planted around the base of the compound. He acknowledged that security lighting may have to be installed around these units. He also indicated that the compound will be surrounded by an eight-foot high chain link fence, with barbed wire across the top.

The next witness to testify for the Applicant was Mr. Patrick Welsh, who identified himself as American Tower's Development Manager for the Mid-Atlantic Area. He stated that he is responsible for all new tower development, including site acquisition, identification of candidates and management of actual tower construction. Before beginning his testimony, Mr. Welsh submitted a September 17, 2002 letter from Verizon's engineering company indicating that Verizon intends to utilize the proposed tower, and that its equipment will meet all applicable federal standards governing the emission of energy from such facilities.

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Mr. Welch described his continuous involvement with the decision-making process of location and approval of the proposed site. He stated that he is personally familiar with the subject parcel, which was selected by identifying an existing coverage gap for several wireless communications carriers. According to the witness, the subject parcel is located at the center of this coverage gap. He indicated that the Grandview Christian Church location was initially selected because of its large size, its distance from four large subdivisions, and the presence of Fallston Swim Club, which he claimed acts as a buffer between the tower and the closest subdivision.

The witness elaborated on Mr. Moseley's testimony regarding the Applicant's consideration of potential alternate sites. Mr. Welch testified that the Fallston Swim Club property had no significant advantage over the subject site, because of its close proximity to both a large subdivision and the nearest residential property. The "Sawmill Property" is also located closer to this subdivision, and has no buffers or natural screening to reduce visibility from those residential properties.

Mr. Welch testified that Youth's Benefit Elementary School, and adjacent Fallston Recreation Complex, is owned by Harford County, which is not interested in leasing any portion of the property to the Applicant. He also described the practical difficulties which would have resulted from attempting to place a 100 by 100 foot compound in the limited amount of unused space at those facilities. He indicated that no sites north or east of those facilities were considered, because of their proximity to several subdivisions, and their distance from the carriers' identified coverage gap.

The witness next testified that the "Diamond-Shaped Parcel" at the northwest corner of Fallston and Pleasantville Roads, was ruled out because construction on that site would have required the removal of a significant number of trees, and, because the property is closer to a large subdivision. He next stated that the "Nursery Property" located west of Fallston Road, had insufficient ground elevation, and would have necessitated the construction of a much taller tower. Mr. Welch also testified that several parcels located immediately south of Fallston and Pleasantville Roads, were rejected due to their small size and unfavorable B1 zoning.

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Properties near the intersection of Baldwin Mill and Fallston Roads were not considered, as they were too far west for the carriers to obtain needed coverage from those locations.

Mr. Welsh then testified that the Applicant's original application to construct a tower on the subject site had been withdrawn due to community opposition. Following the withdrawal, the Applicant re-evaluated the entire area, but was unable to locate a more appropriate location for the proposed communications tower.

Finally, Mr. Welsh clarified that the base of the monopole will not be lighted, and that the landscaping surrounding the compound will consist of a four sided, double row of White Pine trees. Each tree will be between five and six feet tall when planted, and grow approximately twelve to fourteen feet tall.

In response to cross examination by numerous area residents, and People's Counsel, Mr. Welsh testified that the re-evaluation did identify two properties previously considered by the Applicant. The first is located behind the B1 properties identified as the "Shoe Box Parcels." The witness testified that this site was not selected because it contains a strip mall with a 7-11 store on the front portion, and an active septic field in the rear wooded area. The second parcel is unavailable because it contains a residential dwelling. According to Mr. Welsh, the Grandview Christian Church site was eventually re-selected because of its large size, its distance from four major subdivisions, and the partial screening provided by existing trees, the church, and the adjoining Fallston Swim Club.

The next witness to testify for the Applicant was Mr. Hassan Khalil, who qualified, and was admitted as an expert in the field of radio frequency engineering. Mr. Khalil testified that he is employed by Expert Wireless Solutions and Sprint PCS. His position requires him to evaluate potential sites for the location of Sprint cellular communications equipment in Harford, Carroll, Baltimore, Anne Arundel, Howard, Queen Anne and Worchester Counties.

The witness stated that he has personally attempted to use a Sprint cellular phone while driving along Fallston Road in the area of the subject property, but the signal either varies in intensity or is nonexistent in this location.



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Mr. Khalil identified Sprint PCS as an FCC licensed carrier, which provides wireless telephone services in the Harford County area. This service is provided through Sprint's antennas, which send and receive signals to and from mobile telephones operated by Sprint subscribers. The signals are handed off from antenna to antenna as the subscriber travels between various points in the Sprint network. Towers within the network are arranged in a honeycomb pattern.

The witness testified that he was personally involved in the evaluation of the subject site, and that the decision regarding location of the site was his responsibility. Mr. Khalil testified that potential sites are not limited to the existing search ring, and that any sites which would fulfill the needs of the carrier are considered. He did indicate that preferred sites are generally located at or near the center of the search ring, and that his primary consideration is site elevation, although vegetation is also considered because it may interfere with the signal transmission.

He identified various tools used by radio frequency engineers to evaluate particular sites. One such tool consists of a team of individuals who drive the area collecting live data, which is then analyzed to determine areas where new sites are needed. Once a problem area is identified, engineers evaluate all existing structures and buildings in that area to determine whether an antenna could be located on one of those structures.

Another tool described by Mr. Khalil was a computer generated coverage plot, which is used as a prediction tool. This tool visually depicts signal strength at various locations within the carrier's coverage area. The colors on the plot change as signal strength increases or decreases. According to the witness, the data generated by his use of this tool shows that the proposed site is located at the center of a four and one-half mile coverage gap. Mr. Khalil indicated that most of this coverage gap could be filled by locating an antenna on the Applicant's proposed tower.

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Mr. Khalil testified that Fallston Road is heavily traveled, and that Sprint considers it important to provide coverage along such roadways. He indicated that prior to being made aware of the Applicant's proposal to construct a communications tower on the subject property, Sprint was conducting its own search for an appropriate site in the vicinity of Fallston and Pleasantville Roads. In connection with this search, Mr. Khalil had generated a search ring identifying an area within a one-quarter to one-half mile radius around the subject parcel. According to the witness, the only viable location previously considered by Sprint was located directly across Pleasantville Road from the subject parcel. He stated that had Sprint considered erecting a 190 foot monopole on that site, however, that idea was abandoned when Sprint learned of the Applicant's plans to build a tower on a larger property directly across the street.

Mr. Khalil next explained that the computer tool which identified the existing coverage gap was utilized to predict the coverage which would be obtained by placing a Sprint antenna at the proposed site. He identified a propagation map, containing information regarding all existing Sprint sites, plus a hypothetical site added at the subject location. He testified that, as shown by that map, placing a Sprint antenna at the proposed location, would increase signal strength and provide acceptable coverage, in all but a relatively small portion of the existing gap.

He testified that Sprint had previously evaluated the possibility of placing an antenna on an 80 foot light pole at the Fallston Recreation Complex property, but had determined that this would not provide sufficient coverage unless additional sites were constructed to complete a circuit within the existing gap. Finally, Mr. Khalil testified that, if the Applicant fails to construct the proposed communications tower, Sprint will renew its plans to build a 190 foot tower in close proximity to the subject property.

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On cross examination, Mr. Khalil indicated that Sprint has a broad band network which allows the carrier to have a gap of up to forty percent of its coverage area, and still maintain a valid FCC license. He testified that, placing an antenna at the top of the proposed tower would resolve Sprint's coverage problems. He also stated that the problem could not be corrected by simply increasing power to existing sites, because this would create additional interference at those sites, and, because cellular antennas are limited in the number of calls they can accept or receive at any given time.

Mr. Khalil explained that subscribers traveling within Sprint's area may be able to connect to other carriers' signals if their phones go into roaming mode while traveling through one of Sprint's coverage gaps. However, he also stated that roaming services, when available, result in significant additional costs to the subscriber. He indicated that, although he had not done a roaming check to determine what signals are available from other carriers in the area, his own phone had never gone into roaming mode while in this area, leading him to believe that there is no strong signal from another carrier in the vicinity of the subject property.

In response to questions regarding his computer generated coverage prediction, Mr. Khalil explained that the latitude and longitude of the proposed site were entered into the prediction tool, along with information about the proposed antenna power strength. The computer then ran calculations, and generated a chart of predicted coverage based on the information submitted. He acknowledged that he did not calculate projected coverage for a 160 to 180 foot tower, because the tool cannot create projections with noticeable color differences based on minor tower elevation changes. In response to questions concerning the drive test, Mr. Khalil explained that this test was conducted by placing a transmitter on a crane, which was then raised to an elevation of 150 feet above the subject property. Drivers were then sent to travel the road and evaluate available coverage from that height.

On redirect, the witness explained that the projection tool contains a database of information regarding existing topography and natural features, which is updated regularly, except for data regarding tree height. He also stated that computer predictions are only 90 percent accurate due to potential variations in the thickness and height of area trees.

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Mr. Ryan Conaway was the next witness to testify for the Applicant. He stated that he is employed by T Mobile U.S.A.(formerly Voicestream Wireless) as a Radio Frequency Engineer, and that his duties are similar to those performed by Mr. Khalil. The witness testified that he was personally involved in the engineering and site selection of the subject parcel for the placement of a T Mobile communications antenna. He identified a computer propagation map showing existing T Mobile coverage in the area of the subject property which identified a 4.2 mile coverage gap in the area of Fallston and Pleasantville Roads. According to the witness, T Mobile has no existing coverage within the radius of the identified gap.

Mr. Conaway further testified that T Mobile has a policy of locating its antennas on existing structures whenever possible. In keeping with this policy, the company conducted a thorough search for existing structures within the aforesaid 4.2 mile coverage gap, He testified that no suitable structures were found in that area, but stated that it may have been possible to place an 80 foot high antenna on the Fallston Recreation Complex property. However, this would fill only one-half of T Mobile's existing coverage gap, so an additional tower would be needed to fill the remaining portion of the gap.

The witness then stated that T Mobile had also generated a search ring which contained the area surrounding the proposed site. It considered building its own tower in that area, but because company policy favors co-location, that idea was abandoned in favor of locating on the Applicant's proposed monopole at a height of 178 feet. The witness testified that if location at the proposed site is not possible, T Mobile will resurrect plans to construct a new tower in the immediate vicinity of the subject property.

Mr. Conaway explained that he had conducted testing to determine whether the proposed site would meet T Mobile's coverage needs, and had generated a computer propagation showing projected coverage at the proposed height, at the proposed location. According to his predictions, this placement would provide service for the company's entire coverage gap. The witness also testified that he had completed a propagation of proposed coverage at 150 feet, and determined that placement of an antenna at this height would not fill T Mobile's existing coverage gap.

In response to cross examination concerning T Mobile's drive test, the witness indicated

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that, based on the results of a 150 foot height drive test, he was comfortable with the potential 170 to 180 foot placement on the Applicant's proposed tower. He further stated that the drive test was done by a consulting company, and that information from the drive test was computed by plugging that data into a post-processing tool, which produced a propagation map showing different coverage levels in the area of the test.

The witness also answered questions regarding T Mobile's existing antennas, on BGE towers in the vicinity of Fallston Road near the subject property. He stated that T-Mobile has a 100-120 foot antenna on a BGE tower just prior to Rutledge Road. He stated that he did not consider locating on the BGE transmission lines which cross Fallston Road south of the site near Route 147, because the area is too far out of the search ring to accomplish T-Mobile's coverage objectives.

The next witness to testify was Mr. Ronald Lipman, a principal with the real estate consulting and appraising firm of Lipman, Frizzell & Mitchell. Mr. Lipman was duly qualified and admitted as an expert in the field of real estate appraisal. The witness testified that for the past seven years, he has been studying the financial impact of cellular communications towers on residential property values. He does this by comparing sales prices of comparable properties in various proximity to cellular communications towers within a given neighborhood or community. In order to determine which sales are comparable, he considers factors such as lot size, square footage of homes, and whether sales are proximate in time. He obtains much of this information from the Maryland State Department of Assessment and Taxation (MSDAT) database, which contains detailed information on all real property in Maryland.

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Mr. Lipman also testified that he has been involved in two ongoing long term studies involving subdivisions containing cellular communications towers. The first study, which involves the Potomac community in Montgomery County, Maryland, began in 1995, and has been continually updated. The witness described Potomac, as a unique, dynamic and upscale community. There are three communications towers located along the Falls Road corridor, and Mr. Lipman testified that he has tracked sales of over 600 houses in varying proximity to those towers. The second study involves a subdivision of approximately 70 to 75 homes and undeveloped lots, located in Clearview Estates in Howard County, Maryland. Clearview Estates contains an interior lot on which a monopole has been constructed. Mr. Lipman testified that he has tracked sales prices of over fifty comparable properties in varying proximity to that monopole.

The witness summarized his findings and provided evidence regarding the sales of several specific parcels within the study areas. He then expressed an opinion, based the above findings, plus his experience in the field of real estate appraisal, that proximity to communications towers has had no impact on property sales prices, and hence, no impact on property values in the areas studied.

Mr. Lipman then testified that he had personally inspected the proposed site and the surrounding area. He also reviewed tax maps, aerial photographs, balloon test photographs and MSDAT data on properties within a 1000 foot, one-half mile, and one mile radius of the subject property. The MSDAT data included information on proximity to the proposed site, average house and lot sizes, lot values, and project improvement dates. The witness stated that by applying the same methodology used in the Potomac and Clearview studies to the MSDAT data on properties surrounding the proposed site, he had produced an impact study for the proposed tower.

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He also described several photographs which, when placed together, comprise a panoramic picture of the immediate environment of the subject property. He indicated that, as typified by these photographs, a proliferation of telephone poles and wires is a significant component of the landscape in most suburban areas. He stated that these poles are usually between 25 and 30 feet tall, and loom larger on the horizon than a 200 foot communications tower located approximately 1,000 feet away. Mr. Lipman also stated that, in his opinion, people have become desensitized to the visual impact of poles and towers, and are therefore, willing to pay full market value for housing located in close proximity to such structures.

Finally, Mr. Lipman opined that because communications towers do not negatively impact property values in the upscale neighborhoods of Potomac and Clearview Estates, they will not affect property values in lower priced Harford County. He stated that purchasers of more expensive properties are generally more particular about issues of this type. He further testified that there is nothing unique about Harford County, which he described as a bedroom community similar to Howard County. He did acknowledge that this comparison would not apply to the unique Potomac community.

On cross examination, Mr. Lipman responded to questions posed by both People's Counsel and various neighboring property owners regarding the towers located within his study areas. According to the witness, the three towers in Potomac range between 150 feet and 200 feet tall, contain an unknown number of antennas, and all have lighted equipment sheds within their compounds. The monopole in Clearview Estates is approximately 150 feet tall, contains only one antenna, and has an unlighted shed at its base.

In response to questions regarding the Harford County data, Mr. Lipman indicated that this information was compiled between January of 1998 and September of 2000. He was unable to provide any information about the number of sales considered, other than to state that he had looked at enough properties to make the data reliable. He did acknowledge that Harford County market values have probably increased by about twenty percent since September of 2000.

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Mr. Lipman stated that he has testified approximately fifteen times in favor of applications to construct cellular communications towers, and that he has never testified against the construction of such a tower. However, on one occasion, he did advise a client that a proposed lattice work tower had insufficient set-backs, and was improperly sited. The witness testified that he has never done a study to determine the impact of communications towers on adjoining, as opposed to proximate properties. He indicated that he is aware of other Howard County subdivisions similar to Clearview Estates which do contain monopoles, but he did not consider it necessary to study those areas. He also testified that there are other communities similar to Potomac, which do not contain communications towers, but stated that studying property outside the Potomac community would have required subjective adjustments, thereby decreasing the value of his comparisons.

Mr. Lipman testified that he considered the following categories of information in arriving at his conclusions regarding property values; names of buyers and sellers, legal description of the property, zoning, tax map identification number, liber and folio numbers, assessed value, improvement descriptions, tax map grid and parcel numbers, lot size, square footage of existing dwellings, date of construction, sale prices, land assessment values, and information regarding existing improvements. He acknowledged that the MSDAT database provides a significant amount of additional information which he did not consider, including physical descriptions of specific homes, and the presence of swimming pools. The database does not contain information regarding existing vegetation, driveways, fencing, and landscaping. However, Mr. Lipman stated that he can determine whether lots are wooded, or non-wooded, by viewing aerial photographs. When asked to compare Potomac and Fallston, Mr. Lipman indicated that are both suburban. He did, however, acknowledge that there are agricultural components, such as growing crops, found in the Fallston area, that are not found in Potomac.



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Mr. Lipman then explained that his opinion regarding people's immunity to the presence of communications towers is based on their willingness to pay market value for those homes. He acknowledged that he has never personally discussed this matter with any homeowners. When questioned about his comparison between communications towers, and electric lines and telephone poles, Mr. Lipman acknowledged that a typical utility pole is generally shorter than surrounding mature trees, but that a communications tower is generally taller than those trees.

Finally, Mr. Lipman stated that he had not performed any studies of Harford County property values, before and after the construction of communications towers, due to the unavailability of sufficient data. He also testified that he was unaware of any such studies done by any other appraisers.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune stated that the department had conducted an investigation of the subject request, and determined that the proposed facility meets all of the Harford County Code provisions applicable to the construction of communications towers in an Agricultural district. He also testified that the Department had considered all of the provisions contained in Section 267- 9I of the Harford County Code and determined that the proposed facility meets all the criteria contained in that section.

Mr. McClune further stated that, in his opinion, the proposed use, at the proposed location, would not result in any adverse impact to adjacent properties, or have any greater impact on those properties, than it would have if it were located elsewhere within an Agricultural district. He also testified that the proposed facility could be operated in a manner consistent with the Harford County Code, and that the proposed development was consistent with generally accepted engineering and planning principals.

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Mr. McClune testified that the Department of Planning and Zoning recommended approval of the subject request in its May 24, 2002 Staff Report, subject to four conditions: 1) that the site plan be submitted for review and approval through the Development Advisory Committee; 2) that screening be provided from adjacent residential properties; 3) that the Applicant obtain all necessary permits and inspections; and 4) that the facility be constructed in general compliance with the site plan designated as Attachment 4 to the Staff Report.

Finally, Mr. McClune testified that the Department of Planning and Zoning had forwarded the subject application to the County's Radio Frequency Engineer, who had determined that the proposal meets all requirements set forth in Harford County Code Sections 267-53.5G(1) and .5G(4).

In response to questions from the Hearing Examiner, Mr. McClune testified that the Department had done a site inspection of the subject property, and analyzed the topography of the site and surrounding properties. It also considered the relationship of the property to adjacent properties. According to Mr. McClune the Department found nothing unique about the subject property, or the area in which it is located, to suggest that the proposed tower would have any greater impact than the placement of a similar tower on any other agriculturally zoned parcel. He acknowledged the visual impact inherent in the construction of any communications tower, but stated that this factor was considered by the County in enacting the current communications tower legislation.

The witness also testified that, in his opinion, based upon the information submitted with the application and the testimony presented in the subject case, he believes that the Applicants had made a diligent attempt to locate existing structures suitable for co-location of cellular antennas.

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On cross examination, Mr. McClune testified that Harford County Code Section 26753.7A(2) indicates that cellular communications towers are presumed generally incompatible with residential areas, and that the Brandywine Farms subdivision, located approximately 1,000 feet south of the subject property, is zoned Rural/Residential. He explained, however, that, in his opinion, this provision requires only that an Applicant look outside the residentially zoned property for an agriculturally zoned site. The witness further testified that, the Department had considered traffic generated by the Youth's Benefit Elementary School, and Fallston Middle School, prior to determining that the proposed tower would not have any impact on traffic in the vicinity.

Mr. John Sommerfeld, who owns property adjacent to the proposed site, appeared and testified in opposition to the application. He stated that he purchased his home in 1991, and that it adjoins the subject parcel on the northeast side. The properties share a 600 foot common lot line. Mr. Sommerfeld's home is located 50 feet from this lot line, and approximately 500 feet from the proposed tower compound. He described the topography between his house and the proposed site as rolling meadow, which contains no natural screening, other than corn presently growing on the subject property.

Mr. Sommerfeld testified that when he and his wife moved to Fallston nine years ago, they were drawn to this particular home site by its pristine view. Prior to purchasing the property, he carefully investigated the zoning and residential status of the surrounding property, and checked the Lehigh Property site plan to ensure that there was no available road access between the proposed site and the Grandview Christian Church. According to the witness, he and his wife have constructed numerous additions within the past two years, increasing the size of their home from 1,100 square feet to 7,000 square feet. These additions were designed to take full advantage of all southern views, which face the agricultural lot on which the proposed tower would be constructed.

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Mr. Sommerfeld introduced numerous photographs of the his property, the subject property, and surrounding parcels, taken between the fall of 2001 and summer of 2002. He testified that the photograph admitted as Protestants' Exhibit 3B shows the backdrop of thirty to forty foot trees behind the proposed site, and was taken to illustrate that a 195 foot monopole will be highly visible above the tree line. With regard to Protestants' Exhibit 4A, Mr. Sommerfeld testified that he had drawn a sketch on that photograph showing the location of the proposed pad site, compound and monopole, as it will appear from his dining room window. He stated that he was able to create an accurate rendition of the proposed location because he has worked in the field of mechanical design for over nine years. Mr. Sommerfeld next testified that Protestants' Exhibit 5A shows an evening view, taken from his rear door, looking toward the proposed tower site. Lighting from the church is clearly visible in the background. The witness indicated that this picture proves that lighting at the base of the proposed tower would also be highly visible from his property.

According to Mr. Sommerfeld, if the proposed tower is approved and constructed, he will have a clear view of the structure, and the compound from every window in his home, and from the deck which he plans to construct on the rear of his home. He testified it appalls him to imagine 195 foot cell tower placed in the center of this breathtaking view, and that thoughts of the proposed tower have permeated his family's every waking moment, since the day on which they first learned of the proposal. He disagreed with Mr. Lipman's visual comparison of telephone poles and cell towers, and opined that the negative visual impact of telephone poles is verified by the fact that they are now required to be located underground in new residential areas.

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Mr. Sommerfeld then testified that his home was recently assessed at \$650,000, and that construction of the proposed tower would decrease the value of his property by fifteen to twenty percent. He also believes that his home would not sell as quickly as a comparable property without an adjacent communications tower. The witness stated that these opinions are based on his long term experience as a general contractor, which places him in constant communication with numerous realtors. He also indicated that the proposed screening would not prevent his property from decreasing in value, because, although it may hide the compound, the trees will never grow tall enough to screen the tower itself. Mr. Sommerfeld summarized a Baltimore County zoning decision, which held that the construction of a 150 foot communications tower would decrease the value of nearby properties. However, he provided no case number, or specific facts with regard to the referenced decision.

To further illustrate his aesthetic concerns, Mr. Sommerfeld identified and described a photograph taken from Old York Road, located in Jacksonville, Maryland. Two towers are present in that photograph, one approximately 200 feet tall, and the other, approximately 400 feet tall. The witness indicated that although the photograph was taken from seven miles away, the towers are still prominently visible on the horizon. He then introduced a close-up photograph of those towers to illustrate the unattractive appearance of painted red and white striped towers.

Mr. Sommerfeld also expressed concerns about the lack of existing easements, and right-of- ways on the proposed site. He testified that the current plot plan for the subject property (Protestant's Exhibit 26), clearly identifies it as a residential lot with one ten foot right of way, located to the rear of the property. The plot contains a notation that "vehicular access to Pleasantville Road for Lot 3 will not be permitted for residential use." Mr. Sommerfeld then described a site plan (Protestant's Exhibit 27) submitted in connection with the Applicant's original application, showing that the Applicant is proposing to provide access to the proposed site by constructing a right-of-way between Lots 2 and 3. Mr. Sommerfeld questions how this could be accomplished, as there is no existing right of way at that location on the original Lehigh property plot.

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Mr. Sommerfeld also testified that, based on his many years' experience as a general contractor, he disputes Applicant's allegations that no lighting will be required on the buildings at the base of the proposed compound. He stated that the Harford County Electrical Code requires lighting at every outside access door. Because the pad site itself will have multiple buildings, with required exterior lighting, Mr. Sommerfeld believes that the Applicant will be unable to adequately screen the pad site by planting a few pine trees. The witness also expressed concern over the fact that the landscape at the proposed site would need to be drastically altered in order to provide a level surface for the erection of the buildings in the base compound.

Mr. Sommerfeld next testified about, and introduced a photograph of, a sign located at the intersection of Pleasantville and Baldwin Mill Roads, approximately one and one-half miles south of his home. The sign, which is actually located in Baltimore County, identifies Gunpowder Manor, Long Green Valley as property originally laid out in 1683. It then describes several changes of ownership, culminating in the remaining land being seized and sold as confiscated British Property in 1782. According to Mr. Sommerfeld, the sign is located within the Gunpowder Crossing scenic view area.

Mr. Sommerfeld further testified that, because of the proposed site's proximity to Fallston Airport, and the fact that low-flying aircraft and balloons actually take off from that area, he believes that, the FAA will actually require, not only nighttime illumination, but red and white paint on the tower. According to Mr. Sommerfeld, there are other low-flying aircraft, which come in and out of Edgewood and Aberdeen Proving Grounds, which fly in a direct flight path over his house. In addition, the Maryland State Police MedEvac helicopters use the church parking lot as a landing site.

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With regard to safety issues, Mr. Sommerfeld expressed concern that the children who go to the Youth's Benefit Elementary School may be endangered by the placement of a cell tower in close proximity to the school, because communication towers are military targets. He is also worried about potential adverse health effects on school children who will use cellular telephones if reception becomes available in this area. This opinion was based on a pamphlet distributed with cellular telephones in the United Kingdom warning that children under the age of sixteen should be discouraged from using these devices for nonessential purposes, and suggesting that they keep cellular calls as short as possible due to radio frequency emissions emanating from the telephones themselves.

The witness also testified that the Co-Applicant, Grandview Christian Church was granted a special exception to construct a school on its property in July 2000 (Case No. 5059). An Amended Decision was issued in that case on August 23, 2000. As a condition of granting the requested special exception, the church agreed to plant a row of Norway Spruce every ten feet, in a zig zag pattern, along its 900 foot long common boundary with Mr. Sommerfeld's property. The trees were never planted. Also, during that hearing church officials presented testimony that no lighting would be installed on the parking lot. Lighting has now been installed. He stated that these previous cases show a pattern by the Co-Applicant of failing to abide by conditions set forth in zoning decisions involving its property.

The witness then identified two photographs of available alternative sites for the location of a communications tower in the area of the subject property. The first is a BGE right-of-way, which crosses Fallston Road at Hess Road, approximately one and one-half miles due north of the subject parcel. Mr. Sommerfeld testified that a new communications tower has recently been constructed on that site. The second alternative site is a Commercial/Agricultural zoned property located at the corner of Fallston and Pleasantville Roads. The photograph depicts a prominently placed sign, stating that this property is "For Sale."

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Mr. Sommerfeld testified that he believes the Applicant's offer to pay Eight Hundred Dollars per month rent to the owner of the "Sawmill Property," was inadequate. He disputed Applicant's allegations that locating on the "Diamond-Shaped Parcel" would require significant deforestation, and testified that the trees on that property are scrub trees, which are only about ten years old.

With regard to the "Seven-Eleven" property (parcel 308), Mr. Sommerfeld testified the proposed tower could be located on that site regardless of the rear septic reserve area. According to the witness, the rear portion of the property contains only a septic reserve area which can be easily moved. He also testified that the septic area can be changed to a tanked area capable of being pumped out, and that this is done every day. The witness indicated that he had spoken with the owner of the existing store, who advised him that the parent corporation (Southland) had granted the Applicant permission to construct a tower on the site, and to relocate the septic reserve area.

Mr. Sommerfeld also expressed dissatisfaction with the Applicant's failure to pursue camouflaging the tower within the Grandview Christian Church steeple. He testified that two years ago, during construction of the church addition, the steeple sat on the church parking lot for eight months, while the church was negotiating with American Tower for the lease of the subject parcel. In addition, and perhaps more importantly, Mr. Sommerfeld testified that the Lehigh Property Lot 3, on which the church is located is commercially zoned. In his opinion, the cell tower should be located on this commercial property, rather than on the agriculturally zoned subject parcel.

Mr. Sommerfeld further testified that neither he, nor Mr. Quingert, nor a neighboring property owner named Mr. McCann, had ever been approached by the Applicant with regard to potential placement of a tower on their property. All of these parcels back up to the 80 foot tall row of trees located behind the "Seven-Eleven" site, and he believes that this existing tree line would provide significant camouflage for the proposed tower.



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He also testified that Mr. Quingert's property is higher in elevation than the proposed site, which would allow for the construction of a shorter tower. Mr. Sommerfeld indicated that he would have had no objection to the tower being located on Mr. McCann's property, which is located to the front of his house.

He then identified a series of photographs depicting different types of cellular towers, and the methods by which they can be located on existing structures or power lines. Finally, Mr. Sommerfeld attempted to admit a petition allegedly signed by over one hundred property owners residing in close proximity to the subject property. The petition was marked as Protestant's Exhibit 29, but was not admitted by the Hearing Examiner because most of the signers were not present, and they were, therefore, not available for cross-examination by the Applicants.

On cross examination, Mr. Sommerfeld testified that his property is zoned Agricultural. He also testified that the utility towers depicted in Protestants' Exhibit 7A are located in the vicinity of Route 152 and Hess Road. He verified the location of those towers on Applicant's Exhibit 5, by marking them with an "X." Mr. Nelson, after asking the Applicant to confirm the location, marked with another "X" at the location of separate power line, which also runs north to northwest, and is located across from the Fallston Park and Ride between Harford Road (Maryland Route 147).

Mr. Michael Worsham appeared and testified in opposition to the application. He introduced copies of two provisions from the Code of Federal Regulations. The first was 47 CFR Section 24.103, which requires narrow band PCS licensees to construct base stations sufficient to serve 37.5 percent of the population of their service area within five years of licensing, and 75 percent of the service area population within ten years of licensing. The second, 47 CFR Section 24.203 requires broad band PCS licensees to provide "adequate service to at least one-third of the population in their licensed area within five years of being licensed, and two-thirds of the population in their licensed area within ten years of being licensed."

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**Mr. Worsham testified that, in his opinion, these regulations prove that the carriers in question do not need coverage from the proposed tower to maintain their licenses, and hence, they have no real radio frequency needs for the proposed tower.**

**Additional testimony presented by Mr. Worsham regarding lack of radio frequency need, included the introduction of sales brochures, web pages, or both, from each of the four carriers which have expressed an intent to locate on the proposed tower. He introduced a sales pamphlet and two web pages for Sprint PCS, which show that Sprint can provide service outside of its coverage area by utilizing a roaming feature. This feature enables Sprint subscribers to send and receive signals from other carriers' equipment, if, Sprint has roaming agreements with those carriers. He also testified that Sprint does have some available coverage plans which do not charge additional fees for roaming calls.**

**Mr. Worsham introduced a sales pamphlet containing a map of T Mobile's northeast calling area, which extends from Virginia through Maine, and stated that T Mobile subscribers do not incur no roaming charges for calls placed within this home calling area. He introduced an information pamphlet from AT&T Wireless showing that its home calling area also extends from Virginia to Maine. Finally, Mr. Worsham introduced a sales brochure containing a map of Verizon's coverage area, which depicts the subject property. He testified that a Verizon employee had informed him that Verizon has existing coverage in the area of the proposed site, and that she has personally placed and received calls in this area on her Verizon cellular phone. He also testified that a map, introduced by Verizon at a prior zoning hearing, indicated that it is currently able to provide coverage in the entire Fallston area because it utilizes a different technology than other carriers.**

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**Mr. Worsham testified that he objects to the construction of a communications tower on the present site for aesthetic and safety reasons. Although the tower will not be visible from his house, he stated that he will see it when he drives by the site on his way to work. He also opined that because the proposed site is located uphill from the Rite-Aid property, it will stick out above the surrounding properties. He described Fallston Road as heavily traveled, and testified that he has observed many individuals talking on cellular telephones while driving along that road. This causes safety concerns, not only for himself, but also because of the proposed tower's close proximity to two schools.**

**Mr. Worsham attempted to introduce testimony about the potential health effects of radio frequency emissions, however, Applicant's objection to that testimony was sustained by the Hearing Examiner, who ruled that the Federal Telecommunications Act of 1996 preempts consideration of such evidence by a local zoning board.**

**Colin Crawley, who resides in the nearby Brandywine Farms subdivision, appeared and testified in opposition to the application. The witness requested that the Hearing Examiner consider safety issues, such as ice falling from the tower, or the tower being blown over by heavy winds, because of its close proximity to a school. He also expressed concern about potential explosions of sulfuric acid contained in the large batteries located at the base of the tower. Mr. Crawley testified, based on Internet research, that there are alternative means to provide wireless communication services, which are not as visually unattractive as the proposed monopole. These include camouflaging the tower by constructing it immediately adjacent to a tall tree, or utilizing a micro-cell PCS cable system such as that used by a Sprint Spectrum affiliate in San Diego.**

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Mr. Crawley further testified that he had reviewed the minutes of a Vernon Township Zoning Board hearing, including expert testimony which indicated that the construction of a communications tower causes nearby property values to decrease by approximately thirteen percent. Based upon his review of that testimony, Mr. Crawley believes that his property value will decrease by thirteen percent if the proposed monopole is constructed. Finally, Mr. Crawley provided the Hearing Examiner with case citations for six Federal Circuit Court cases, which he believes are relevant to the subject application.

Mr. John Quingert, who resides on Pleasantville Road due west of the subject property, appeared and testified in opposition to the application. He indicated that, he is opposed to the placement of the proposed tower for aesthetic, safety and environmental reasons. He also objects to the subject application because of Co-Applicant's failure to comply with the conditions of previous special exceptions, Applicant's failure to perform a diligent search for alternate locations, and the potential for setting a precedent for the construction of future towers in the Fallston area.

Mr. Quingert introduced two photographs showing the area surrounding the proposed site, Mr. Sommerfeld's home, the Fallston Swim Club, and a residential neighborhood located behind the swim club property. He testified that between fifty and one hundred homes would be able to see the tower at its proposed location. The witness stated that a nineteen-story tower is quite unattractive, and also expressed concerns that the cumulative effect of the proposed tower, in conjunction with other existing towers in the area will negatively impact the aesthetic quality of the community.

Mr. Quingert also testified that Shock Trauma currently lands MedEvac helicopters in the church field adjoining Pleasantville Road, and that there is no other available open space in that area. He believes that the proposed tower would cause a navigation obstacle for those helicopters, and expressed concern over the close proximity between the current landing site, and the proposed tower site.

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The witness also expressed concern about potential runoff from the paved portion of the site, which he believes may affect wildlife. These concerns are based largely on information contained in American Tower's 2001 Annual Stockholder Report, which states that its operations are subject to various laws relating to exposure to hazardous and non-hazardous substances, materials, and waste, and may be liable for "the cost of investigation, removal, or remediation of soil and groundwater contaminated by hazardous substances or waste." The report also states that the company may be "subject to common law claims by third parties based on damages and costs resulting from off-site migration of contamination." A copy of this report was introduced as Protestants' Exhibit 23.

Mr. Quingert then testified that he had been informed by American Tower representative, Barbara Pivic, that the company selected the present site because it was not "economically feasible" to go elsewhere. She further advised him that the company had chosen not to spend the money to camouflage the tower, or to look for another site. The disclosure of this information led him to believe that the company failed to perform a diligent search for alternative sites.

Mr. Quingert testified that the Co-Applicant has a history of obtaining special exceptions for its property, and then failing to abide by testimony, and site plans, presented at zoning hearings considering its requests. He testified that site plans were produced at a previous special exception hearing (Case No 5059) showing that ball fields were to be constructed at the site of the proposed tower. The ballfields were never constructed. He also testified that the church had failed to comply with its agreement to plant of vegetative screening between the James Run Christian Academy and Mr. Sommerfeld's property.

Finally, Mr. Quingert testified that he fears that granting a special exception for this particular location will set a precedent for other towers to be constructed in the general area of the proposed location.

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Mr. Joseph Livingston appeared and testified in opposition to the application. He objected to the Applicant bringing in “out-of-county representatives” to testify that Harford County is similar to Howard County. He disagrees with this conclusion, because Howard County has paid fire and emergency medical services personnel, while Harford County utilizes only volunteers. He also stated that he believes the Applicant is seeking to place the tower at this location, because they cannot locate in Long Green due to restraints in that area.

### **CODE PROVISIONS AND FINDINGS OF FACT**

The basic Code requirements for granting any special exception are as follows:

#### **Section 267-51. Purpose:**

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

#### **Section 267-52. General regulations.**

- A. Special exceptions require the approval of the Board in accordance with § 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.

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- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”

Applicable Code provisions and the Hearing Examiner’s findings (*in italics*) regarding special exception requirements for communications towers, are set forth below:

### **Section 267-53.4.C Communications Towers.**

Communications towers shall be allowed by special exception, up to 199 feet, in the R, RR, R1, R2, VR, VB, B1, B2 and AG Districts.

*The proposed tower is 195 feet tall and the subject property is zoned AG .*

### **Section 267-53.5. Provisions applicable to all communications towers.**

- A. All communications towers shall be structurally designed to accommodate for co-location, which shall mean the ability of structure to allow for the placement of antennas for 3 or more carriers. This provision may be waived by the approving body if it is determined that a co-location design will have an adverse impact on the surrounding area.

*The proposed tower is designed to accommodate co-location of at least six carriers, plus the County’s emergency equipment. The Applicant’s witnesses testified that it will make space available to the county for its communications purposes.*

- B. No aviation-related lighting shall be placed upon any communications tower unless specifically required by the Federal Aviation Administration or other governmental entity.

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*The Applicant has no plans to place lighting on the tower unless it is required by the Federal Aviation Administration (FAA). The FAA has been notified of the proposal, and has informed the Applicant that no lighting will be required. SEE Notes 9 and 10 on the site plan incorporated as Attachment 4 to the Department of Planning and Zoning Staff Report, and Applicant's Exhibit 1. The Applicant's witnesses also testified that the FAA has indicated that no lighting will be required on the proposed tower. This fact was verified in correspondence from the county's radio frequency engineer, which states that, because it is located three kilometers away from the Fallston Airport, "the proposed tower will not require FCC registration or tower lighting." That correspondence was incorporated as Attachment 11 to the Department of Planning and Zoning Staff Report.*

- C. Monopoles shall be the preferred communications tower structure type within the county.**

*The proposed tower is a monopole design. SEE Staff Report Attachment 1 tab 3 record drawings of the proposed tower.*

- D. To the extent practicable, communication towers shall have suitable landscaping in order to screen the site from adjoining properties.**

*The Applicant has proposed landscaping to screen the compound and the base of the tower. The proposed landscaping consists of double row of pine trees planted around the perimeter of the compound. The trees will be 4-5 feet tall when planted, and will grow to a height of 10-12 feet. The Department of Planning and Zoning suggested that submission of a landscaping plan be required as a condition of approval. SEE the Tower Facility Detail Site Plan incorporated as Department of Planning and Zoning Staff Report Attachment 4, and also introduced as Applicant's Exhibit 1.*



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*The Protestants presented un rebutted evidence, that the Co-Applicant failed to comply with condition of a previous special exception, requiring the installation of landscaping to screen the adjacent Sommerfeld property. The Sommerfeld property is used for residential purposes, and is located approximately 264 feet from the base of the proposed tower. The Notification and Decision of Hearing Examiner in Case No: 5059, was admitted as Protestants' Exhibit 28A. The alleged non-compliance was verified by the Department of Planning and Zoning, on page three of its Staff Report.*

- E. The only signage permitted on any communications tower shall be a single sign no larger than 6 square feet, affixed to the equipment building or fence enclosure that identifies the tower owner, each locating provider and the telephone number for the person to contact in the event of an emergency.**

*The Applicant has expressed its intent to comply with this Code provision. Note 15 on the site plan introduced as Applicant's Exhibit 1, states in that no signs are proposed for this facility.*

- F. Upon completion of a communications tower and every 5 years after the date of completion, the owner of the tower shall submit to the Zoning Administrator written certification from a professional engineer verifying that the tower meets all applicable Building Code and safety requirements applicable at the time the original building permit was issued. Failure to submit said certification 60 days of written notification by the Department of Planning and Zoning to the owner of the tower or any successor in interest shall result in the start of the revocation process for the tower approval.**

*The Applicant has expressed its intent to comply with this Code provision.*

- G. All zoning certificate applications for the construction of new communications towers shall be subject to the DAC review process, with the following additional requisites:**

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- (1) Whether an applicant has satisfied the radio frequency need requirements identified in this section shall be reviewed by a radio frequency engineer. The engineer shall be retained by the county from an approved panel of such engineers to be created and maintained by the county. The engineer shall determine whether the applicant has shown a radio frequency need, based on coverage and/or capacity issues, or other engineering requisites, to construct a new communications tower;**
- (2) When the communications tower is permitted by right, the engineer's determination shall be made in the ordinary course of DAC review;**
- (3) When the communications tower is allowed by special exception the county's radio frequency engineering review shall be made in connection with the staff report review pursuant to Chapter A274-1.D. Such review will be completed prior to any zoning hearing and will preclude further DAC review of radio frequency issues; and**
- (4) The county's radio frequency engineer shall ensure that any new tower does not interfere with or obstruct existing or proposed communications towers designed for public safety use.**

***The required information was submitted to, and reviewed by, the County's radio frequency engineer, RCC Consultants, Inc. In its April 22, 2002 letter to the Department of Planning and Zoning, RCC stated that the proposal "fills an identified coverage gap in both the Sprint PCS and Voicestream systems." The county engineer also determined that the location of the proposed tower will not interfere with "current or proposed microwave paths for the Public Safety radio system." A copy of the referenced letter is incorporated as Attachment 11 to the Department of Planning and Zoning Staff Report, and was also admitted as Applicant's Exhibit Number 4.***

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- H. The applicant shall be responsible for maintaining the communications tower in a safe condition.

*The Applicant has expressed its intent to comply with this Code provision.*

- I. Communications towers shall be utilized continuously for wireless communications. In the event that a communications tower ceases to be used for wireless communications for a period of 6 months, the approval will be revoked. In the event that the Zoning Administrator is presented with evidence that further viability of the tower is imminent, the Zoning Administrator may grant one extension of the approval for a period not to exceed 6 months beyond the revocation of the use. The applicant shall take all necessary steps to dismantle the tower and remove and dispose of all visible remnants and materials from the subject parcel 90 days after termination. The applicant shall ensure removal of the tower and all associated accessory structures by posting an acceptable monetary guarantee with the county on forms provided by the office of the Zoning Administrator. The guarantee shall be submitted prior to the issuance of a building permit and shall be for an amount equal to a cost estimate approved by the Zoning Administrator for the removal of the tower, plus a 15% contingency.

*The Applicant has expressed its intent to comply with this Code provision.*

- J. Every application for the construction of a new communications tower shall include the following:
- (1) Information demonstrating the applicant's radio frequency need for the facility, including computer modeling information, an explanation as to why co-location is not feasible and a list of alternative sites considered;

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*Radio frequency need and computer modeling information, for Sprint and Voicestream Wireless, was included with the Application and incorporated as Attachment 1 tab 1, to the Department of Planning and Zoning Staff Report. Radio frequency need and computer modeling information for Verizon Wireless was admitted as Applicant's Exhibit 7. The Protestants introduced sales brochures and web page information from each of the four carriers intending to locate on the proposed tower, in an attempt to prove that adequate coverage is already available in the area.*

*The Sprint brochure clearly shows a coverage gap in the vicinity of the subject property. Its web page indicates that this area is accessible only by roaming coverage, which incurs additional charges under the terms of most Sprint calling plans. The T Mobile brochure contains a caveat, stating that subscribers must be within its coverage area to use a T Mobile telephone, and warns customers to check a detailed coverage map prior to purchasing one of its products. The AT&T pamphlet states that roaming charges may apply outside of the local home calling area, and warns that coverage is not available at all locations shown on the attached coverage map. The Verizon brochure states that the attached rate map is intended to indicate only where rates apply, and is "not a depiction of actual service, or rate availability, or wireless coverage.*

*The Hearing Examiner therefore finds that the Applicants have met their burden of showing a radio frequency need for the proposed tower. An explanation as to why co-location is not feasible was included in the application, and verified in great detail by the Applicant's witnesses. The Applicant's witnesses offered extensive testimony regarding all alternative sites considered.*

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- (2) A checklist prepared in conformity with Section 106 of the National Environmental Policy Act and any other documents filed by the applicant with the FCC related to this site if requested by the Department;

*The required checklist was included with the Application. The application also contained copies of Applicant's FCC NEPA Summary Report, and correspondence from the Applicant to FCC Environmental Compliance Screening, and the Maryland Historical Trust. Also included was a response, dated January 8, 2001, from United States Department of the Interior indicating that there are no federally protected or listed endangered or threatened species within the project impact area, and a response dated January 17, 2001, from the Maryland Department of Natural Resources, stating that the department has no record of Federal or State rare, threatened or endangered plants or animals within the project site. The above documents were incorporated as Attachment 1 tab 2 to the Department of Planning and Zoning Staff Report.*

- (3) A site plan, including the layout of the site, a drawing or other physical depiction of the proposed communications tower and any equipment buildings, and a map showing the area within a one mile radius of the tower;

*A site plan including the layout of the proposed site, and drawings of the proposed equipment buildings, was included with the Application and incorporated as Attachment 4 of the Department of Planning and Zoning Staff Report. Record drawings of the proposed tower were included with the Application and incorporated as Attachment 1 tab 3 of the Department of Planning and Zoning Staff Report. A map reflecting the area within a one mile radius of the proposed tower was submitted with the application, and incorporated as Attachment 1 tab 8 of the Department of Planning and Zoning Staff Report.*

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- (4) A description of the number of carriers' equipment that the tower can accommodate and a statement as to whether the applicant will allow other carriers to co-locate on the facility;

*Information regarding the number of carriers whose equipment can be accommodated by the proposed tower was included with the Application and incorporated as Attachment 1 tab 3 to the Department of Planning and Zoning Staff Report. This information was verified by the Applicant's witnesses, whose testimony on this point was undisputed. The Applicant also submitted a statement, with the application, expressing its intent to allow co-location at the proposed site. This statement was incorporated as Attachment 1 tab 4 of the Department of Planning and Zoning Staff Report.*

- (5) Documentation demonstrating the tower shall be designed and constructed in accordance with any applicable American National Standards Institute standards;

*Information regarding the design of the proposed tower was included with the Application and incorporated as Attachment 1 tab 3 to the Department of Planning and Zoning Staff Report. This information demonstrates that the tower will be designed and constructed in accordance with applicable American Standards Institute standards, as well as FCC requirements and Institute of Electrical and Electronic Engineers standards.*

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- (6) Proof that the applicant owns or otherwise has permission to use the site, along with any easements necessary to access the site;

*An Option and Lease Agreement, and a First Amendment and Addendum to Option and Lease Agreement, was included with the Application. These documents were incorporated as Attachment 1 tab 5 of the Department of Planning and Zoning Staff Report, and also admitted as Applicant's Exhibit 3. According to the terms of the Lease Option Agreement, the Co-Applicant Grandview Christian Church, has agreed to lease a portion of the subject property to the Applicant. The site plan, submitted with the application, and incorporated as Attachment 4 to the Department of Planning and Zoning Staff Report, shows that access to the site will be provided via a 12 foot wide gravel drive which will connect the proposed site to the Co-Applicant's existing access road.*

- (7) A certification from each carrier that will utilize the facility that its equipment will meet all applicable federal standards governing the emission of energy from such facilities; and

*According to two of Applicant's witnesses, Sprint PCS, Voicestream Wireless, T Mobile and AT& T have all expressed an intent to locate on the proposed tower. Certifications from Sprint PCS and Voicestream Wireless were included with the Application, and incorporated as Attachment 1 (tabs 6 and 7) of the Department of Planning and Zoning Staff Report. A Certification from T Mobile (formerly Verizon Wireless), which expressed its intent to locate on the tower after the application was filed, was introduced as Applicant's Exhibit 7. No certification from AT&T was provided either with the application, or during the hearing.*

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- (8) A nonbinding 5-year plan showing the applicant's existing and proposed communications network within the county. In accordance with state law on access to public records, § 10-611 et seq. of the State Government Article, the Department shall treat the 5-year plan it obtains as confidential and shall not permit public inspection of that information.

*The Applicant's plan, showing its existing and proposed communications network within Harford County, was included with the application.*

- K. When proposing a new communications tower, the applicant must demonstrate a radio frequency need for such a facility by showing:

- (1) That the applicant has researched the co-location possibilities in the area, including in its research a review of the county's database of structures; and

*The Applicant presented extensive, undisputed testimony, concerning its search for co-location possibilities in the area, including testimony regarding its research of the county's database of structures.*

- (2) That due to the absence of sufficiently tall structures in the search area, the absence of structural capacity on existing structures or other valid engineering or economic factors, no viable co-location opportunities exist in the search area.

*There are no existing structures in the area which would meet the needs of the carriers intending to locate on the proposed tower. The Applicant's witnesses fully explained the unsuitability of each tall structure located within its search ring.*



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### **Section 267-53.6. Additional special exception requirements.**

**An applicant proposing a new communications tower in the R, RR, R1, R2, VR, VB, B1, B2 or AG Districts shall demonstrate that the request complies with the following conditions:**

- A. The placement of the communications tower at the proposed location will not have a material negative impact on the value, use or enjoyment of any adjoining parcel.**

***The Applicant produced an expert in the field of real estate appraisal, who testified that the proposed monopole, at the proposed location, will have no adverse impact on the value, or use and enjoyment of, any property in the area. His opinion was based on two studies investigating the impact of existing monopoles within the Potomac community in Montgomery County, Maryland, and the Clearview Estates subdivision in Howard County, Maryland. The witness testified that the presence of monopoles within those areas has had no impact on the sales price of proximate properties.***

***The witness has not studied the effects of monopoles on Harford County property values, due to a lack of sufficient available data. He did, however, conduct a thorough investigation of property values in the area of the proposed tower, and determined that they are generally lower than those found within his study areas. He indicated that the results of the Potomac and Clearview Estates studies are relevant to the subject proposal because if communication towers do not affect property values in those more expensive areas, they will not affect property values in lower priced Harford County.***

***The Hearing Examiner rejects the relevance of the Potomac study because the witness described Potomac, as a unique community, stating that he would be “hard pressed” to find another like it. The witness also acknowledged that there are no agricultural components in Potomac, such as those found within Harford County. The Hearing Examiner accepts the relevance of the Howard County study, because the witness described both Clearview Estates, and Harford County, as bedroom communities, and testified that there is nothing unique about either area.***

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*Although the witness failed to produce any studies related solely to adjoining, as opposed to proximate properties, the Hearing Examiner accepts the witnesses' conclusions regarding lack of effect on adjoining property values in this case, because the only adjoining residence is located over 500 feet away from the proposed tower. The witness clearly indicated that several parcels within his study areas were located approximately 500 feet from the communications towers involved in those studies.*

*The Applicant's expert also produced a series of photographs, which, when taped together, provided a panoramic view of the immediate area of the subject property (Applicant's Exhibit 15). This panorama shows the proliferation of telephone poles, in the subject area. According to the witness, these telephone poles loom larger on the horizon than a single 200 foot monopole, located 1,000 feet away. This point was clearly illustrated by the witnesses reference to a photograph showing a view of a 30 foot telephone in juxtaposition to a monopole located 1000 feet away (Applicant's Exhibit 13). The witness opined that home buyers have become immune to the presence of such "interruptions to their view in almost any rural/residential or suburban setting" as evidenced by their willingness to pay full price for homes located in close proximity to these structures. SEE Applicant's Exhibit 14, p 11. He further testified that "the monopole, while visible, will be sufficiently small to literally be a non-event, particularly considering the existing telephone poles and lines which align Fallston Road and Pleasantville Road."*

*The owner of the only residentially used adjoining property, testified that the proposed tower would lower his property values by fifteen to twenty percent. However, he cited no facts, studies, or expert testimony as a basis for this opinion. The same property owner provided heartfelt testimony that the visual impact of the proposed tower will materially impact the use and enjoyment of his property. He produced numerous photographs, which clearly demonstrate the beauty of the proposed site, and the aesthetic effect that the proposed tower will have on his property. However, cellular towers are inherently unattractive, and the witness produced no testimony, as required by Maryland case law, to prove, that the proposed tower, at the proposed location, will be more aesthetically unappealing, than it would be, if it were constructed anywhere else within an Agricultural District.*

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- B. The applicant has made a diligent attempt to locate the applicant's antenna on an existing tower or nonresidential building or structure.**

***The Applicant provided ample evidence of its attempt to co-locate on an existing tower or non residential building, and fully explained all reasons why each possible co-location site was either unsuitable, or unavailable.***

- C. The applicant shall provide the following additional information in support of its application:**

- (1) Photographs of existing site conditions;**

***Photographs of the site, and the surrounding area, were introduced as Applicant's Exhibit No. 3.***

- (2) Photographs demonstrating that a balloon test has been conducted, or other evidence depicting the visual impact of the proposed tower within a one mile radius of the tower; and**

***Photographs of the balloon test, and photo simulations of the proposed tower, were provided by the Applicant and introduced as Applicant's Exhibit Numbers 6A, 6B, and 6C.***

- (3) A map describing the topography of the site and the area within a one-mile radius of the proposed tower.**

***A topography map showing the site, and surrounding area, was introduced as Applicant's Exhibit 5. The topography of the proposed site is also shown on the site plan introduced as Applicant's Exhibit 1.***

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### **Section 267-91. Limitations, Guides and Standards.**

In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.

*The predominant land use is agricultural, with several residential subdivisions, and individual residences, located nearby. There is some commercial development at the intersection of Fallston Road and Pleasantville Road, and also along Fallston Road to the east and west of the intersection. A private swim club adjoins the subject property to the east, and a church and school adjoins the subject property to the north. There is a school and a recreation and parks facility located to the east of the subject site, on the north side of Fallston Road. The immediate area of the subject property is not densely populated, which makes the proposed site more appropriate for the placement of a communications tower, than a more heavily populated area would be.*

- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

*The Applicant presented undisputed testimony, that the proposed site will generate only six trips per month by service technicians, and will have no adverse impact on sidewalks, parking facilities, road access, peak traffic periods, or road construction.*

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- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

*The FCC requires narrow band wireless carriers to provide coverage to 75 percent of their service area within 10 years of licensing, and broadband PCS providers provide coverage to two-thirds of their service area within 10 years of licensing. Digital mobile systems require a closer network of towers to complete their coverage loops, than the older style analog systems. Sprint PCS, Voicestream Wireless, T Mobile, and AT&T have all expressed their intent to co-locate on the proposed tower. The Applicant has also agreed to make space available to the county for its communication purposes. The co-location of multiple wireless carriers will reduce the need for construction of additional towers in the vicinity of the subject property. In addition, the topography of the proposed site allows for construction of a monopole less than 200 feet tall, which will not require aviation lighting.*

- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise on the use of surrounding properties.

*The proposed tower will not generate any odors, dust, gas, smoke, fumes, vibration, glare, or noise.*

- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

*These facilities will not be affected by the proposed tower.*

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- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

*Federal legislation requires wireless communications carriers to provide service to significant portions of their coverage networks within well defined time frames. The purpose of that legislation is to encourage competition among carriers, and, to improve the scope of wireless coverage available to consumers. Several carriers operating within Harford County, have identified a significant coverage gap in the vicinity of the subject property. The construction of the proposed tower will improve digital communications in within Harford County. The Applicant has demonstrated that there are no suitable existing tall structures available for co-location. Four different wireless carriers have expressed an intent to locate on the proposed tower. In addition, the Applicant has agreed to provide space on the tower to the County for its communication purposes. Co-location of multiple carriers on the proposed tower will reduce the need for the construction of additional towers in the subject area of Harford County.*

- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.

*The proposed site will have no adverse impact on the Grandview Christian Church, James Run Christian Academy, Youth's Benefit Elementary School, or the Fallston Recreation Complex.*

- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

*The proposed tower will improve digital communications within the county, and provide space for the county's communications equipment. The Applicant has provided ample evidence that there are no suitable tall structures available for co-location. Utilization of the proposed tower by multiple carriers will reduce the need for need for construction of additional communications towers in the vicinity of the subject property.*

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- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

*The proposal will not adversely impact any Natural Resources Districts, sensitive natural features, wildlife, wetlands, or opportunities for recreation and open space.*

- (10) The preservation of cultural and historic landmarks.

*The proposed tower will have no adverse impact on any known cultural or historic landmarks. The Maryland State Highway historical sign, referred to by the Protestants, is located one and one-half miles away from the subject site, and merely details the history of the area. No evidence was introduced to indicate that the acreage referred to on that sign, would be impacted in any way by the proposed tower.*

## **Conclusion and Recommendation**

The Applicants, American Tower Corporation and Grandview Christian Church, are requesting a special exception to construct a communications tower in an Agricultural District.

The Court of Appeals reiterated the standard for determining whether to grant a special exception, in the case of Schultz v. Pritz, stating that:

“...[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood* would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

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Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden.” (*Emphasis in original*) Schultz v. Pritts, 291 Md. 1, 11, 432 A.2d 1319 (1981); see also Turner v. Hammond, 270 Md. 41, 310 A.2d 543, 551 (1973).

The Harford County Code allows the granting of special exceptions for communications towers in Agricultural (AG) Districts, if all requirements set forth in the Code, are met by the Applicant. The Code provisions regarding communications towers, are exceedingly comprehensive, and are designed to facilitate consideration of each and every impact normally associated those towers. They place a significant burden of proof on any applicant wishing to locate, or construct, a communications tower anywhere within Harford County.

As set forth in detail in the preceding section, the Applicant adduced testimony, sufficient to show that the proposed use, meets all prescribed standards and requirements, for the construction of a communications tower, to be utilized by Sprint PCS, Verizon Wireless and T Mobile. It failed to meet the requirements which would allow for utilization of that tower by AT&T. It must therefore be determined whether a special exception should be granted for a communications tower, at this location, to be used by Sprint PCS, Verizon Wireless and T Mobile.

“To determine whether the presumption in favor of approving a special exception application has been overcome, a zoning body must engage in a case-by-case factual inquiry concerning the effect of the proposed land use on the surrounding region and its consistencies with the policies expressed in the master plan governing the region. [citations omitted] The duties given the [zoning body] are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.” County Council of Prince George’s Cty v. Brandywine Enters., Inc., 109 Md. App. 599, 675 A.2d 585, 593 (1996).



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The “appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” Schultz, supra, at 291 Md. 15, 432 A.2d 1327; citing, Anderson v. Sawyer, 23 Md. App. at 624-25, 329 A. 2d at 724 (1974) and Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31, 214 A.2d 146 (1965).

In Mossburg v. Montgomery County, the Court of Appeals reversed a zoning board decision denying a special exception for a solid waste transfer station. The court ruled that the board’s decision was not based on substantial evidence of adverse impact at the proposed location, greater than the impact it would create elsewhere, within the county, where such uses are permitted. In holding that the Board’s denial of the requested special exception in that case was arbitrary and illegal, the court stated:

“The question in the case sub judice, therefore, is not whether a solid waste transfer station has adverse effects. It inherently has them. The question is also not whether the solid waste transfer station at issue here will have adverse effects at this proposed location. Certainly it will and those adverse effects are contemplated by the statute. The proper question is whether those adverse effects are above and beyond, i.e. greater here than they would generally be elsewhere within the areas of the County where they may be established,...” Mossburg v. Montgomery County, 107 Md. App. 1, 666 A. 2d 1253 (1995).

The pivotal question in the subject case, is therefore, whether the proposed communications tower would cause more of an adverse impact at the subject location than it would if it were located elsewhere within the Agricultural District. The question is not whether the use would have any adverse effect, because some adverse effects are implied by the fact that communications are allowed in Agricultural Districts only as special exceptions, rather than as permitted uses. “Once an applicant presents sufficient evidence establishing that his proposed use meets the requirements of the statute, even including that it has attached to it some inherent adverse impact, an otherwise silent record does not establish that that impact,

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however severe at a given location, is greater at that location than elsewhere.” Mossburg, supra, 107 Md. App. 1 at 9. The Hearing Examiner must therefore analyze, in detail, the testimony presented by the Protestants, to determine whether they have met their burden of establishing that the proposed tower will have a greater impact at this location, than it would have if located elsewhere within the zone.

Various Protestants objected to the proposed application on the basis of the aesthetics. They pointed out that the proposed site is located in the middle of an open field, on a parcel with one of the highest ground elevations in the immediate vicinity. Mr. Sommerfeld, whose home is 575 feet from the proposed tower, testified that his property is separated from the site by a rolling meadow, which contains no natural screening. The Applicant’s proposed landscaping will provide screening for the base of the tower, and the surrounding compound, but will provide little, if any, screening, from the tower itself. Also appearing in opposition, was Mr. Quingert, whose property is approximately 1200 feet west of the subject site, on the opposite side of Pleasantville Road. Both of these witnesses produced photographs of the proposed site, which depict its pristine beauty and rural character. The photographs unquestionably demonstrate, that the proposed tower will stick out above the existing tree line, and surrounding properties. Mr. Crawley, who resides in the Brandywine Farms subdivision, approximately 1,100 feet from the site, and Mr. Worsham, who will not be able to see the tower from his home, testified that he will have to look at it when he drives by the area on his way to work, also objected to the aesthetic impact of the proposed tower.

The evidence presented by the Protestants, clearly indicates that the proposed tower, at the proposed location, will have an adverse aesthetic impact on their rural neighborhood. However, all communications towers create adverse visual impacts in surrounding rural areas.

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The test for approval is not whether there are adverse aesthetic impacts, but whether these impacts are greater at the proposed location than they would be if the communications tower were located elsewhere within an Agricultural District. The Court of Appeals addressed this issue directly, in AT&T Wireless Services, v. Mayor and City Council of Baltimore. The court relied heavily on Evans, infra, stating that:

“Perhaps the case that is most closely on point is Evans, ... where the landowner asked for a special exception to construct a two hundred foot, three-legged, free-standing, lattice-type metal tower. 112 Md. App. at 287-90. The proposed site of the tower was a five-acre parcel, zoned agricultural. *Id.* A real estate appraiser testified as an expert for the landowner. He concluded that the proposed tower at the proposed site would have no adverse effect on real estate values in the neighborhood above and beyond the effect that is inherently associated with the location of a tower. *Id.* at 294. At the hearing, numerous property owners testified against the grant of the special exception. *Id.* at 296-98. Property owners testified that, in their view, the proposed tower would depress property values and would be unsightly. AT&T Wireless Services v. Mayor and City Council of Baltimore, 123 Md. App. 681 at 696-697, 720 A. 2d 925 (1998). See Evans v. Shore Communications, Inc., 112 Md. App. 284, 685 A.2d 454, (1996).

The special exception requested in Evans, was denied by the Zoning Board, which “opined that the tower would be detrimental to the use of nearby residents in terms of the use and enjoyment of the rural character of their property.” The Board’s decision was reversed by the trial court. The Court of Special Appeals, upheld the trial court’s reversal, stating that “[t]he Board fails to state how construction of the tower in question undermines the rural character of the neighborhood and somehow transforms the area into a neighborhood antithetical in character to that of a rural neighborhood. The uniqueness referred to by the Board must be in terms of adverse effects and the adverse effects must be above and beyond those inherently associated with the location of a special exception use any where else within the zone.” Evans, supra, 112 Md. App. 681 at 304.

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In considering the evidence presented in the AT&T case, the Court of Appeals stated that “[t]here was testimony that the Ten Hills area was “bucolic” and “rural,” but again, similar to the situation in Evans, the Board failed to state how construction of the tower in question would undermine the rural or bucolic character of Ten Hills or how it would transform the area into a neighborhood “antithetical in character” to that of a rural or bucolic neighborhood.” AT&T Wireless Services v. Mayor and City Council of Baltimore, 123 Md. App. 681, at 698.

Maryland case law has therefore, clearly established, that the rural and picturesque nature of a proposed location, standing alone, is insufficient to justify the denial of a communications tower, solely on the basis of aesthetic impact. There must also be evidence that the proposed area is unique, or that it will be impacted in a unique way, by the granting of the special exception. The Protestants clearly established that the proposed tower will have a negative aesthetic impact on their rural community. However, they failed to produce any evidence that this area is unique, or different, from any other location within the AG District, or that the proposed use would have any aesthetic impact, over and above, that which it would have at any other location within that district.

The Protestants also alleged that the proposed tower would have less aesthetic impact if it were located elsewhere within the carrier’s’ coverage gap. They cross-examined Applicant’s witnesses extensively about each alternative site considered, and presented exhaustive testimony in support of locating the proposed tower on one of those sites. Alternative sites considered by the Applicant included the numerous parcels. The “Sawmill Property” located at the northeast the corner of Fallston and Pleasantville Roads is too close to a large subdivision, and contains no natural screening to protect it from view by homes located within that subdivision. The B1 parcels located directly across the street from the subject site are too small to allow for setbacks greater than 40 feet and are closer to other residential properties. The B1 parcel located at the southwest corner of Fallston and Pleasantville Roads is occupied by a convenience store, and gasoline station. They are too small for the proposed tower, and, digging at that location would pose a danger of striking underground gas wells.

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The “Nursery Property” located west of the site, along Fallston Road, is lower in elevation, and would require the construction of a 270 foot lattice style tower to accomplish the carriers coverage objectives. The “Diamond Shaped Parcel” located at the northwest side of Fallston and Pleasantville Roads, is also closer to a large subdivision, with several houses backing directly to the site. Building on that parcel would require the removal of a significant number of scrub trees. The “Fallston Swim Club Property” is adjacent to the proposed site, but the owners of that property are unwilling to lease any of that parcel to the Applicant. Likewise, the county, which owns the Fallston Volunteer Fire Company site was unwilling to lease a portion of that property to the Applicant.

Other parcels considered were too far out of the carriers’ search ring to meet their coverage objectives. These included a silo near the intersection of Fallston and Kidd Roads, a site near Fallston and Baldwin Mill Roads, BGE right of ways located near Fallston and Hess Roads, and Fallston Road and Route 147.

Several Protestants objected to the Applicant’s failure to locate the proposed tower on either the existing church steeple, or one of the new light poles scheduled for construction on the Fallston Recreational property. However, the Applicants provided undisputed testimony that those structures are not tall enough to meet the carriers coverage needs without the construction of additional towers in the neighborhood. Additionally, AG parcels 198, and 266, are smaller than the subject site, and both are currently occupied by residential dwellings.

The Protestants did produced credible, un rebutted evidence, that the proposed tower would have less aesthetic impact if it were located on the B1 zoned “7-11 property” (parcel 308), which backs to a mature line of 80 foot tall trees. They also produced credible testimony showing that the owner of the 7-11 property was willing to lease a portion of the site to the Applicant, and that it would be possible to build the proposed tower on that site if the existing septic reserve area were moved to another location on the property.

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However, the 7-11 parcel is zoned B1, which is disfavored, for the construction of new communications towers. Harford County Code Section 267-53.7 provides that “Applications proposing new communications towers in the R, RR, R1, R2, VR, VB and B1 Districts shall be presumed not to be favored unless the applicant can demonstrate that no suitable alternative site exists. In order to obtain a special exception in one of these districts, the applicant must demonstrate, in addition to the requisites applicable to all other tower requests... [that] there exists no suitable alternative location in a B2, B3, CI, GI, LI or AG District identifying with particularity any other sites considered...”

The Court of Appeals addressed this issue directly, in the AT&T case, stating that “the persons who opposed AT&T’s conditional use permit appeared to be of the view that there would be less adverse consequences if AT&T’s tower facility were located at Edmondson High School than at the proposed site. There are two problems with that testimony. First, the Edmondson High School site was not in an R-1 zone, and the test, as applied in Anderson, Schultz, and other cases already cited, is whether the use will produce a harm that would have an adverse effect above and beyond those inherently associated with such a special exception use ‘irrespective of its location within the zone.’ ” The court emphasized that “ in the case at hand there was simply no evidence that there was any place within an R-1 zone that a 133 foot monopole could be located where it could not be seen by adjoining property owners.” Likewise, the Protestants in the subject case failed to show that there was any other suitable location, within an AG District, where the proposed tower could not be seen, or would be less visible to, adjoining property owners, than at the proposed location.

One Protestant testified, based on Internet research, that there are alternative means available, for providing wireless communications services, which are not as unattractive as the proposed monopole. In support of this contention, he introduced a photograph, showing a communications tower disguised by a large tree. However, he failed to produce any evidence concerning any specific large tree in the vicinity, of the subject property, next to which the proposed tower could be constructed. That witness also testified that the carriers could utilize a micro-cell PCS cable system, such as the one used by a Sprint Spectrum affiliate in San Diego. No testimony was introduced about that technology or its availability in this area.

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Several Protestants raised air traffic safety issues, which they believed would be caused by the proposed tower. They introduced undisputed testimony that there many small aircraft, and balloons, fly directly over the proposed site. They also introduced undisputed testimony that the Maryland State Police MedEvac helicopter has, on occasion, landed either on a field in close proximity to the proposed site, or on the church parking lot. The Protestants expressed generalized concern that the tower would create a navigation hazzard for the aircraft, balloons, or helicopter. However, Note 10 on the site plan for the proposed tower clearly states that the FAA has determined the tower will not exceed FAA obstruction standards, or constitute a hazzard to air navigation in the area. SEE Applicant's Exhibit 1, and the Department of Planning and Zoning Staff Report, Attachment 4. In addition, if the Maryland State Police determine that the proposed tower creates a navigation hazzard for their MedEvac helicopter, it can be safely assumed that they will find an alternative site at which to land.

One Protestant expressed his fear that the proposed tower will interfere with traffic safety, because, the improved coverage which it will create, will enable more motorists to talk on the telephone while driving in the vicinity of the subject property. This issue has been addressed by the Maryland State Legislature on multiple occasions and it has repeatedly chosen not to enact legislation making it illegal to talk on a cellular phone while driving a vehicle. It is, therefore, not within the purview of the Hearing Examiners discretion, to determine that operating a cellular telephone while driving creates an unacceptable safety risk. Another Protestant testified that improved cellular service will cause a danger to school children, who may utilize cellular telephones in the area of the proposed tower. This concern was based on a safety warning, distributed with cellular telephones sold in the United Kingdom. There was no testimony presented that these telephones are the same cellular telephones offered for sale in the Unites States. Nor were there any facts cited in support of the contention that the proposed use will cause more school children, to talk on cellular telephones.

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The Protestants also expressed several general safety concerns, including fear that high winds would topple the tower creating a danger to nearby property owners and school children. However, the specifications submitted for the proposed tower, clearly indicate that it is designed to withstand hurricane force winds, and to collapse upon itself within a limited fall zone around the base, in the event of structure failure. SEE Department of Planning and Zoning Staff Report, Attachment 1, tab 3. Other concerns expressed, were fears of injuries, which could be caused by either ice falling from the tower, or batteries at the base of the tower exploding. There was no testimony introduced to provide a specific factual basis for either of these concerns, and the Courts have held that unsupported conclusions of witnesses, unsubstantiated by specific facts, or studies are “vague and generalized expressions of opinion which are lacking in probative value”. Anderson, supra, at 23 Md. App. 624, 329 A.2d at 724. In other words, “[i]t is the *probability* of danger... rather than the ‘possibility’ of such danger that constitutes grounds for denying a special exception.” Gowl v. Atlantic Richfield Co., 227 Md. App. 410, 341A.2d 832(1975).

The adverse impacts alleged by the Protestants must be “strong and substantial” to overcome the presumption that the proposed use is compatible with the district.” Anderson v. Sawyer, 23 Md. App. 612, 329 A. 2d 716, 724 (1974) In addition, the adverse impact caused by the proposed special exception must be “unique and atypical in order to justify denial.” Sharp v. Howard County Board of Appeals, 98 Md. App. 57, 632 A. 2d 248 (1993) (“Sharp”). “The extent of any harm or disturbance to the neighboring area and uses is, of course, material; but if there is not probative evidence of harm or disturbance in light of the nature of the zoning involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for special exception is arbitrary, capricious, and illegal.” Turner v. Hammond, 270 Md. 41, 54-55, 310 A. 2d 543, 550-551 (1973) (“Turner”).



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Based on the evidence presented, and the guidance of the Maryland Appellate Courts, the Hearing Examiner is left with no alternative but to conclude that the proposed use, at the proposed location, will not result in adverse impacts greater than or different in size and scope than a similar monopole communication tower sited at any other location within an Agricultural District. Therefore, the only remaining consideration, is to determine whether the proposed use is in harmony with the purpose and intent of the Master Plan.

In making this determination, the Hearing Examiner is required to consider ten factors specified in Section 267-9I of the Harford County Code. The Department of Planning and Zoning considered all of these factors and concluded that the proposed use meets or exceeds all of those requirements. The Department also determined that the proposed facility could be operated in a manner consistent with the Harford County Code, and that the proposed development was consistent with generally accepted engineering and planning principals.

As discussed in detail, in the preceding Section, the Hearing Examiner agrees with the Department of Planning and Zoning, that the proposed use meets all factors set forth in Code Section 267-9I. The immediate area of the subject property is not densely populated, and the use will, therefore, have a lesser impact there, than it would have in a more heavily populated area. The proposed use will generate only six trips per month by service technicians, and will have no adverse impact on sidewalks, parking facilities, road access, peak traffic periods, or road construction. The topography of the proposed site, allows for the construction of a monopole tower, less than 200 feet tall, which will not require aviation lighting. The proposed tower will not generate any odors, dust, gas, smoke, fumes, vibration, glare, or noise. Nor will facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal, or the ability of the county or persons to supply such services, be affected by the proposed tower.

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Several wireless communications carriers, operating within Harford County, have identified a significant coverage gap in the vicinity of the subject property. There are no existing tall structures suitable for co-location. Four of the six area carriers, have expressed a desire to locate on the proposed tower. In addition, the Applicant has agreed to make space available to the county, for its communication purposes. Construction of the proposed tower will improve digital communications in within Harford County, and the co-location of multiple wireless carriers will reduce the need for construction of additional towers within the immediate area.

Finally, the proposed use will have no adverse impact on, Grandview Christian Church, James Run Christian Academy, Youth's Benefit Elementary School, or the Fallston Recreation Complex. Nor will it adversely impact any Natural Resources Districts, sensitive natural features, wildlife, wetlands, or opportunities for recreation and open space. Finally, the proposed tower will have no adverse impact on any known cultural or historic landmarks.

For the foregoing reasons, the Hearing Examiner recommends approval of the Applicant's request to construct a communication tower at the proposed location, subject to the following conditions:

1. The facility shall be constructed in general compliance with the site plan designated as Attachment 4 to the Staff Report.
2. The site plan shall be submitted for review and approval through the Development Advisory Committee;
3. The Applicant shall obtain all necessary permits and inspections for construction of the proposed facilities;
4. Screening is to be provided from adjacent residential properties;
5. That the Applicants obtain a bond, within 90 days, in the amount of \$25,000, to enable the County to install landscaping, should Applicant fail to install approved landscaping within 60 days after completion of the compound perimeter;

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6. That the use of the proposed communications tower be limited to the three carriers for whom certifications of compliance were provided by the Applicant, namely, Sprint PCS, Voicestream Wireless, and T Mobile.

**Date     DECEMBER 16, 2002**

**Rebecca A. Bryant  
Zoning Hearing Examiner**